IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2074 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ARPAN ENTERTAINMENT PVT LTD - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
SINGHI & CO for Petitioner(s) : 1,
MR KL PANDYA, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 20/06/2006

CAV JUDGMENT

This petition has been preferred against the order dated 30th December,2005 passed by respondent no.2 - Deputy Collector, Stamp Duty Valuation, Ahmedabad (Annexure "D" to the memo of the petition).

2. Learned advocate for the petitioner submitted that the order dated 30th December,2005 passed by Deputy Collector, Stamp Duty Valuation, Ahmedabad is patently dehors the provisions of the Bombay Stamp (Determination of Market Value of property) Rules,1984 (hereinafter referred to as “the Rules,1984”). No opportunity of hearing has ever been given to the petitioner and ex-parte order has been passed as well as the order is a non-speaking order. The document i.e. Conveyance deed was registered on 28th October,1999 at the office of Sub-Registrar, Memnagar, Ahmedabad vide registration No.2932, whereas the Notice was given on 9th December,2005, which is beyond the period of 6 years and, therefore, as per section 32A(4) of The Bombay Stamp Act,1958 (hereinafter referred to as “the Act,1958”), the respondent has no power, jurisdiction and authority to issue such type of Notice and, hence, the impugned order deserves to be quashed and set aside. In fact, after approximately 6 years of the date of registration of the document, the alleged notice appear to have been given. The petitioner has purchased the land and paid stamp duty of Rs.2,50,050/-, whereas the respondent has fixed the deficit stamp duty of the land in question at Rs.14,32,500/-. Thus, excessively exorbitant fixation of

stamp duty and that too, without giving any opportunity of being heard to the petitioner, by passing a cyclostyled non-speaking order, is palpably arbitrary usage of power and, hence, the impugned order dated 30th December,2005 (Annexure "D" to the memo of the petition) deserves to be quashed and set aside. The respondent no.2 has not given any basis for fixation of market value, which is approximately 5 times more stamp duty of the land in question than what is referred in the conveyance deed.

3. Learned Assistant Government Pleader Mr.K.L.Pandya for the respondents submitted that the impugned order passed by the Deputy Collector, Stamp Duty Valuation, Ahmedabad is true, correct and in consonance with the facts of the present case. The stamp duty of the land in question at Rs.16,82,500/- has been fixed by respondent authority. No Appeal has been preferred against the said order and, so, this Court may not interfere with the order, which is at Annexure "D" to the memo of the petition.

4. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the case, in my opinion, order dated 30th December,2005

passed by respondent No.1 – Deputy Collector, Stamp Duty Valuation, Ahmedabad (Annexure "D" to the memo of the petition) deserves to be quashed and set aside, mainly for the following facts and reasons:-

(i) Looking to the facts and circumstances of the case, the document, which was executed on 28th October,1999, for which, the stamp duty was paid by the petitioner as per Article 6 of Schedule I of the Act,1958. Thereafter, on the basis of report made by the office of the Auditor General, it appears that the order was passed by respondent No.2 and the decision has been taken by the respondent No.2 that petitioner was liable to make the payment of deficit stamp duty of Rs.14,32,500/- and penalty of Rs.500/-. Looking to the nature of the order, it is a non-speaking order. No reasons have been given by the Deputy Collector, Stamp Duty Valuation, Ahmedabad in his order dated 30th December,2005 as to how the document, which has been executed by the petitioner is covered by Article 36 and not by Article 6 of Schedule-I of the Act,1958.

(ii) The copy of the report made by the Auditor General has not been supplied to the petitioner. What is discussed in the report made by office of Auditor General

is not known to the petitioner. Respondent No.2 i.e. Deputy Collector has relied upon the report made by the office of Auditor General without supplying copy to the petitioner this tantamounts to breach of principle of natural justice.

(iii) In a cyclostyled format, the impugned order has been passed, wherein some gaps have been filled in and one and two sentences have been added. Such type of orders are violative of principle of natural justice. This Court has time and again delivered judgments and has quashed and set aside, stereotyped orders passed by respondent No.2. Learned advocate for the petitioner has also relied upon the judgment dated 11th August,2003 delivered by this Court in **Special Civil Application No.4434 of 2003** and also a decision dated 3rd April,2002 rendered by this Court in the case of **Pradhyumanbhai Mohanlal Patel V/s. State of Gujarat** reported in **2003(1) GLR 454**. Learned advocate for the petitioner has also relied upon the judgment dated 22nd February,2005 delivered by Division Bench of this Court in **Letters Patent Appeal No.109 of 2005 in Special Civil Application No.16787 of 2004** as well as the order dated 10th October,2005 passed by this Court in **Special Civil Application No.13729 of 2005 along with other group of**

matters and judgement dated 5th December,2001 passed by this Court **(Coram: Hon'ble Mr.Justice R.R.Tripathi) in Special Civil Application No.654 of 2000 with Special Civil Application No.2794 of 2001** in the case of **Ambuja Metal Industries Pvt.Ltd. V/s. State of Gujarat** and has pointed out that the order dated 30th December,2005 passed by respondent No.2 (Annexure "D" to the memo of the petition) deserves to be quashed and set aside. Looking to the impugned order and comparing it with the facts of the present case, I am also of the opinion that the impugned order is a non-speaking order since no reasons have been assigned for fixing the deficit stamp duty of the land in question at Rs.14,32,500/-. The order dated 30th December,2005 (at Annexure "D" to the memo of the petition) is a cyclostyled order, in which blanks have been filled in. No reasons have been assigned for filling in those blanks.

(iv) The Notice issued by the respondent, which is at Annexure ”B” dated NIL, which was received by the petitioner on 9th December,2005, is also a cyclostyled type notice. No details have been given as to how the petitioner is liable for the payment of deficit stamp duty. There is no reference of report given by office of Auditor General. Looking to the nature of the Notice, it

is totally vague and, therefore, petitioner is not knowing what is to be replied. Annexure “C” is the reply given by the petitioner dated 21st December,2005, in which, three major issues have been raised by the petitioner. There is no discussion worth the name in the order passed by the Deputy Collector, Stamp Duty Valuation, Ahmedabad in his order dated 30th December,2005 (Annexure “D” to the memo of the petition). Thus, the notice is vague and the contentions raised by the petitioner in the reply have not been considered while passing the impugned order.

(v) The document for the land in question was registered before the office of Sub-Registrar, Memnagar, Ahmedabad on 28th October,1999 vide registration No.2932. It appears from the fact of the case that the alleged Notice has been received on 9th December,2005. This is violative of sub-section (4) of section 32A of the Bombay Stamp Act,1958. Sub-section (4) of section 32A of the Bombay Stamp Act,1958, reads as under:-

> *32A(4) The Collector of the district may, suo motu or on receipt of information from any source, <u>within six years from the date of registration</u> of any instrument referred to in sub-section(1), (not being the instrument upon which an endorsement has been made under section 32 or the instrument in respect of which the proper*

> *duty has been determined by him under sub-section (3) or an instrument executed before the date of the commencement of the Bombay Stamp (Gujarat Amendment) Act,1982) (Guj.21 of 1982) call for examine the instrument for the purpose of satisfying himself as to the correctness of the consideration or of the market value of the property which is the subject matter of such instrument and the duty payable thereon; and if on such examination, he has reason to believe that the consideration does not approximate to the market value of such property or, as the case may be, market value of such property has not been truly and fully set forth in the instrument, he shall proceed as provided in sub-sections (2) and (3).*

It appears from the facts of the case that at a much belated stage and beyond the period of limitation, as per sub-section (4) of section 32A of the Act,1958, the alleged Notice has been issued on 9th December,2005.

(vi) Looking to the impugned order dated 30th December,2005 (Annexure “D” to the memo of the petition), it clearly appears that no reasons have been given by the Deputy Collector, Stamp Duty Valuation, Ahmedabad for imposing a liability upon the petitioner. The only reason given in the impugned order is that the petitioner had remained present at the time of hearing and he has represented his case and, therefore, deficit stamp duty to be paid by the petitioner is Rs.14,32,500/-. This cannot be considered as reasoning at all. The burden of

proof is upon respondent. It is the say of the respondent that the document was not properly stamped and, therefore, the respondent has to give reasons while passing the impugned order like Notice (Annexure “B” to the memo of the petition) and the order dated 30th December,2005 (Annexure “D” to the memo of the petition) is equally vague and non-speaking order. There is a total non-application of mind by the Deputy Collector, Stamp Duty Valuation, Ahmedabad while passing the impugned order dated 30th December,2005 (Annexure “D” to the memo of the petition) is a cyclostyled order, in which blanks have been filled in without giving any reasons for filling in those blanks.

(vii) Looking to the facts of the present case, the notice at Annexure “B” dated NIL, was received by the petitioner on 9th December,2005, is not referring the report given by the office of Auditor General, whereas looking to the impugned order dated 30th December,2005 (Annexure “D” to the memo of the petition) the reliance has been placed by Deputy Collector, Stamp Duty Valuation, Ahmedabad upon report given by the office of Auditor General. No copy of this report has ever been supplied to the petitioner. It is the duty vested in the respondent that whenever they are relying upon any

document, the copy of such document ought to be supplied to the petitioner. In the facts of the present case, as the copy of the report of Auditor General is not supplied to the petitioner and, therefore, the impugned order deserves to be quashed and set aside.

5. As a cumulative effect of the aforesaid facts and circumstances of the case and looking to the judicial pronouncements referred to hereinabove, the order dated 30th December,2005 passed by respondent no.2- Deputy Collector, Stamp Duty Valuation, Ahmedabad is hereby quashed and set aside (Annexure "D" to the memo of the petition). Rule made absolute to the aforesaid extent with no order as to costs.

(D.N.PATEL,J)

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